

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Diversified Lenders, LLC, an Oklahoma  
limited liability company,

Plaintiff,

v.

Amazon Logistics, Inc., a Delaware  
corporation; Vertical Holdings Unlimited,  
LLC, a Florida limited liability company  
doing business as VHU Express,

Defendants.

Amazon Logistics, Inc.,

Cross-Claim Plaintiff,

v.

Vertical Holdings Unlimited, LLC,

Cross-Claim Defendant.

No. 16-cv-01232-RSL

AMAZON'S MOTION FOR DEFAULT  
JUDGMENT AGAINST VERTICAL  
HOLDINGS UNLIMITED

Pursuant to Fed. R. Civ. Pr. 55(b)(2) and LCR 55(b)(2), Defendant Amazon Logistics, Inc. ("Amazon") moves for entry of an order of default judgment against Cross-Claim Defendant Vertical Holdings Unlimited, LLC ("VHU"). Amazon seeks a declaration that VHU is required to indemnify Amazon for claims asserted by Plaintiff Diversified Lenders, LLC ("Diversified")

1 and for amounts Amazon paid on behalf of VHU to VHU employees in excess of amounts owed  
2 to VHU for VHU's services.

## 3 II. FACTUAL BACKGROUND

### 4 Contract Between Amazon and VHU

5 On March 9, 2015, VHU entered into a contract with Amazon comprising two parts:  
6 Amazon's standard Delivery Service Provider Terms of Service and the Work Order  
7 (collectively, the "Contract"). Dkt. #27-2; Dkt. #42.

8 Under the Contract, VHU agreed that it was "solely responsible for any and all  
9 obligations owed to [its] Personnel pursuant to applicable Law" and that VHU would "comply  
10 with all Laws pertaining to the Services . . . ." Dkt. #27-2.

11 VHU agreed to indemnify Amazon if its conduct gave rise to any claims against or  
12 expenses borne by Amazon. Specifically, under paragraph 9 of the Contract VHU agreed that it  
13 would:

14 [D]efend, indemnify and hold harmless Amazon . . . from any third-party  
15 allegation or claim based on, or any loss, damage, settlement, cost, expense and  
16 any other liability (including but not limited to reasonable attorneys' fees and  
17 expenses) arising out of or in connection with, (i) any allegation or claim of  
18 negligence, strict liability or misconduct of you or your Personnel, (ii) a breach of  
19 these Terms . . . , (iii) any action or inaction by you or any of your Personnel . . .  
20 , (iv) any allegation or claim that you or any of your Personnel failed to comply  
21 with applicable law.

22 Dkt. #27-4.

23 VHU provided delivery services for Amazon pursuant to the Contract between March  
24 2015 and February 2016. Dkt. #103, at 8. On February 4, 2015, following months of problems  
25 with VHU's services and employees failing or threatening to strike, Amazon terminated VHU.  
26 Dkt. #103, at 4.

Shortly following termination of VHU, Amazon was notified of claims by VHU's  
employees relating to VHU's failure to pay salaries to those employees. Dkt. #103, at 8.  
Amazon worked with the Massachusetts Attorney General, United States Department of Labor

1 (“DOL”) (located in Florida), and counsel for individual VHU employees, and ultimately settled  
2 these claims by remitting payment of \$35,591.30 to the Massachusetts Attorney General,  
3 \$169,659.14 to the DOL, \$111,496 to individual employees in Florida, and \$36,070.27 to  
4 individual employees in Massachusetts, for a total of \$352,816.71. Dkt. #103, at 8. Amazon  
5 also incurred attorneys’ fees and costs associated with resolving claims relating to unpaid VHU  
6 wages in the amount of \$93,737.12. Dkt. #103, at 8.

7 **Procedural Posture of Amazon’s Cross-Claims Against VHU.**

8 On April 29, 2016, Diversified, a factoring company that financed VHU’s operations by  
9 purchasing its rights to receive payment under VHU’s invoices submitted to Amazon, filed a  
10 complaint in the U.S. District Court for the E.D. Florida against Amazon and VHU. Dkt. #1. On  
11 June 13, 2016, Amazon filed an Answer, which included cross claims against VHU. Dkt. #23.  
12 Amazon asserted claims against VHU for declaratory judgment, breach of contract and liability  
13 under the Uniform Commercial Code. *Id.* Amazon’s first cross-claim, for declaratory judgment,  
14 sought a declaration that “VHU is required to defend and indemnify Amazon against all claims  
15 asserted against Amazon by Diversified.” *Id.* at p. 6-7. Amazon’s second cross-claim, under  
16 contractual and UCC principles, alleged that VHU is required to reimburse and indemnify  
17 Amazon for all amounts paid by Amazon on VHU’s behalf to VHU’s employees. *Id.* at p. 7. On  
18 July 5, 2016, the E.D. Florida entered an order of default against VHU pursuant to Fed. R. Civ.  
19 P. 55(a). Dkt. #37. The case was then transferred to the W.D. Washington on Amazon’s motion  
20 to transfer venue. Dkt. #45. Amazon filed an Amended Answer on June 21, 2017, with  
21 consistent cross claims against VHU. Dkt. #90.

22 Although VHU has not appeared or defended in this action, VHU did respond to  
23 discovery and participated in the case in support of Diversified. VHU received subpoenas from  
24 both Amazon and Diversified to produce documents. Declaration of Vanessa Power (“Power  
25 Decl.”) ¶ 2. Amazon and Diversified deposed VHU’s principal, Lisa Bythewood, in both her  
26 corporate representative and individual capacities. *Id.* Ms. Bythewood filed two declarations in

1 this case, supporting Diversified's opposition to Amazon's motion to transfer venue and  
2 supporting Diversified's opposition to Amazon's motion for summary judgment. Dkt. #33-1;  
3 Dkt. #112.

4 On February 5, 2018, the Court entered an order dismissing Diversified's claims against  
5 Amazon with prejudice. Dkt. #129. On the same date, the Court entered an order dismissing  
6 Diversified's claims against VHU without prejudice. Dkt. #128. The only claims remaining are  
7 Amazon's cross-claims against VHU.

### 8 **Amazon's Demand to VHU for Defense and Indemnification**

9 On June 1, 2016, Amazon issued a demand for defense and indemnification to VHU with  
10 respect to Diversified's claims against Amazon. Power Decl., ¶ 3, Ex. A. VHU refused to  
11 defend and indemnify Amazon. *Id.* ¶ 4, Ex. B.

## 12 **III. ARGUMENT**

13 Declaratory judgment in Amazon's favor is appropriate because the only evidence in the  
14 record establishes that Amazon is entitled to the relief sought in its cross-claims against VHU.  
15 The undisputed facts show that Amazon is entitled to defense and indemnification against  
16 Diversified's claims. Additionally, the undisputed facts show that Amazon is entitled to  
17 judgment in its favor based on the amounts it paid on VHU's behalf to VHU employees  
18 exceeding the amounts owed by Amazon to VHU for VHU's services.

### 19 **A. Declaratory Judgment Should Be Entered Confirming Amazon's Right to** 20 **Defense and Indemnification.**

21 Federal courts are authorized by the Declaratory Judgment Act to "declare the rights and  
22 other legal relations of any interested party seeking such declaration, whether or not further relief  
23 is or could be sought." 28 U.S.C. § 2201. Under Washington law, courts are to "construe  
24 contracts to reflect the parties' intent, and give the contract language its ordinary meaning."  
25  
26

1 *Forest Marketing Enterprises, Inc. v. State, Dept. of Natural Resources*, 125 Wn. App. 126, 132,  
2 104 P.3d 40, 43 (2005).

3 VHU agreed to “defend, indemnify and hold harmless Amazon . . . from any third-party  
4 allegation or claim based on, or any loss, damage, settlement, cost, expense and any other  
5 liability (including but not limited to reasonable attorneys’ fees and expenses) arising out of or in  
6 connection with, (i) any allegation or claim of negligence, strict liability or misconduct of you or  
7 your Personnel, (ii) a breach of these Terms . . . , (iii) any action or inaction by you or any of  
8 your Personnel . . . , (iv) any allegation or claim that you or any of your Personnel failed to  
9 comply with applicable law.” Dkt. #27-4 at ¶ 9. As detailed in Amazon’s summary judgment  
10 briefing, incorporated in full here, Diversified’s claims against Amazon arose because of action  
11 or inaction by VHU and potential misconduct by VHU. This action, inaction and potential  
12 misconduct included the following:

- 13 • VHU generated 26 invoices that it submitted to Diversified to obtain financing but  
14 that it never submitted to Amazon in accord with VHU’s contractual obligations  
15 (these invoices were largely duplicative of other, paid invoices and were therefore  
16 not valid anyway). Dkt. #103 at 14-16; Dkt. #122, at 7-8.
- 17 • VHU issued numerous duplicative invoices for which it obtained financing from  
18 Diversified but which were never due and owed by Amazon. *See generally* Dkt.  
19 #103 at 16-17; Dkt. #122, at 8-10.
- 20 • VHU failed to make payment to its employees, which necessitated Amazon  
21 making such payment. *See generally* Dkt. #103, at 12-14; Dkt. #122, 5-7.

22 After taking into account the undisputed evidence supporting Amazon’s claims for offset  
23 and defenses to Diversified’s claims, it is clear that Diversified’s claims in this action arise from  
24 VHU’s action, inaction, and breaches of the Contract, which provide a complete defense for  
25 Amazon to Diversified’s claims. *See* Dkt. #103 at 20-21. Amazon is therefore entitled to  
26 judgment declaring that VHU is required to defend and indemnify Amazon against Diversified’s  
claims.

1 **B. Amazon is Entitled to Judgment for Reimbursement of Amounts Paid on VHU's**  
**Behalf to VHU Employees in Excess of Amounts Owed for VHU's Services.**

Amazon is also entitled to reimbursement of the amounts it paid on VHU's behalf to VHU employees that exceeded its total payment obligations to VHU for VHU's services. VHU agreed that it would "indemnify and hold harmless Amazon . . . from any . . . loss, damage, settlement, cost, expense and any other liability (including but not limited to reasonable attorneys' fees and expenses) arising out of or in connection with, (i) any allegation or claim of negligence, strict liability or misconduct of you or your Personnel, (ii) a breach of these Terms . . . , (iii) any action or inaction by you or any of your Personnel . . . , (iv) any allegation or claim that you or any of your Personnel failed to comply with applicable law." Dkt. #27-4. VHU also agreed that it was "solely responsible for any and all obligations owed to [its] Personnel." Dkt. #27-4, § 5(b). Finally, VHU agreed that "Amazon may (i) deduct from and offset against any amounts owing by Amazon to you under these Terms or any Work Order any sums payable by you to Amazon . . . ." VHU breached the Contract when it failed to pay salaries to its own employees, and Amazon is entitled to be reimbursed by VHU for payments made on VHU's behalf in excess of payments otherwise due to VHU for services.

7           The undisputed evidence confirms that Amazon made payments on VHU's behalf to  
8 VHU employees in the amount of \$446,554. Dkt. #103, at 20-21. After accounting for amounts  
9 due to VHU for services rendered, Amazon overpaid for VHU's services by at least \$296,906.  
10 *Id.* Amazon is therefore entitled to judgment in its favor and against VHU in the amount of  
11 **\$296,906.**

## IV. CONCLUSION

VHU actively participated in this litigation by submitting declarations in support of Diversified's claims against Amazon. Yet VHU elected not to respond to or answer Amazon's cross-claims. Based on the undisputed evidence record, Amazon is entitled to default judgment: (1) declaring that under the terms of the Contract, VHU is required to defend and indemnify

1 Amazon against Diversified's claims; and (2) entering judgment in favor of Amazon and against  
2 VHU in the amount of \$296,906.

3  
4 DATED: May 9, 2018.

5 STOEL RIVES LLP

6  
7 s/ Vanessa Power

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13 Attorneys for Defendant

Amazon Logistics, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 9, 2018, I electronically filed the foregoing with the Clerk of  
3 the Court using the CM/ECF system which will send notification of such filing to the following:

- 4 • **Franklin Dennis Cordell**  
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- s/ Vanessa Power
  - Vanessa Soriano Power, WSBA No. 30777



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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 Diversified Lenders, LLC, an Oklahoma  
11 limited liability company,

12 Plaintiff,

13 v.

14 Amazon Logistics, Inc., a Delaware  
15 corporation; Vertical Holdings Unlimited,  
16 LLC, a Florida limited liability company  
17 doing business as VHU Express,

18 Defendants.

19 Amazon Logistics, Inc.,  
20 Cross-Claim Plaintiff,

21 v.

22 Vertical Holdings Unlimited, LLC,  
23 Cross-Claim Defendant.

Case No. 16-cv-1232-RSL

ORDER ENTERING DEFAULT  
JUDGMENT AGAINST CROSS-CLAIM  
DEFENDANT VERTICAL HOLDINGS  
UNLIMITED, LLC, d/b/a, VHU EXPRESS

24 This matter comes before the Court on Amazon Logistics, Inc.'s Motion for Default  
25 Judgment Against Vertical Holdings Unlimited ("Motion"). On July 5, 2016, entry of default  
26 was entered against Vertical Holdings Unlimited ("VHU") pursuant to Fed. R. Civ. P. 55(a).  
Thus, Amazon Logistics, Inc. ("Amazon") has complied with the requirements of Local Rule  
W.D. Wash. CR 55(b), and now seeks default judgment.

The Court, having reviewed Amazon's Motion, the accompanying declaration, and being  
otherwise advised in the premises, hereby **GRANTS** the Motion.

ORDER ENTERING DEFAULT JUDGMENT AGAINST CROSS-CLAIM  
DEFENDANT VERTICAL HOLDINGS UNLIMITED, LLC, d/b/a, VHU EXPRESS  
(No. 16-cv-1232-RSL) - 1

1 Accordingly, the Court **ORDERS** as follows:

- 2 (1) It is declared that, under the Delivery Service Provider Terms of Service and Work  
3 Orders agreed to by Amazon and VHU, VHU is required to defend and indemnify  
4 Amazon against Diversified Lenders, LLC's claims in this action; and  
5 (2) Amazon is awarded damages in the amount of \$296,906 on its cross-claims against  
6 VHU.

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8 **SIGNED** and **ENTERED** this \_\_\_\_ day of May, 2018.

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13 Robert S. Lasnik  
14 United States District Judge  
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